

Exhibit 1

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

September 7, 2012

The Honorable Stuart F. Delery, Esq.
Acting Assistant Attorney General
Civil Division
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington D.C. 20530

Re: *Doe et al. v. Zedillo*, Civil Action No. 3:11-cv-01433-AWT (D. Conn.)

Dear Stuart:

I write to request that the Department of Justice convey to the United States District Court for the District of Connecticut in the above-referenced case the determination of the Department of State that Ernesto Zedillo Ponce de Leon, the former President of Mexico, is immune from suit in this action by ten anonymous Mexican plaintiffs brought under the Alien Tort Claims Act and the Torture Victim Protection Act. The Complaint alleges claims of legal responsibility of former President Zedillo in connection with a massacre in Acteal, Chiapas, Mexico on December 22, 1997, carried out against local villagers by paramilitary groups allegedly trained or assisted by the Mexican army. The Mexican Government has requested a determination of immunity, stating that "any actions that former President Ernesto Zedillo carried out in connection with the events alleged in the complaint were taken in the course of his official duties as head of state."

Taking into account principles of immunity articulated by the Executive Branch in the exercise of its constitutional authority over foreign affairs and informed by customary international law, and considering the overall impact of this matter on the foreign policy of the United States, the Department of State has determined that former President Zedillo enjoys immunity from suit with respect to this action.

Under immunity principles recognized by the Executive Branch, a sitting head of state's immunity is based on his status as the incumbent office holder and extends to all his actions. The residual immunity of a former official, by contrast, is based upon the character of that official's conduct and extends only to acts taken in an official capacity. In a case involving conduct-based immunity, as here, the Department of State generally presumes that actions taken by a foreign official exercising the powers of his office were taken in his official capacity. This preliminary assessment is particularly appropriate when a former head of state is sued, because

-2-

holders of a country's highest office may be expected to be on duty at all times and to have wide-ranging responsibilities. And that initial assessment gains further support where, as here, the foreign government itself has asserted that the actions of its official were taken in an official capacity. In such cases, the Department then generally determines that immunity is appropriate, unless plaintiff has provided a basis for questioning that preliminary assessment.

Particularly in light of the generalized allegations in the instant complaint, the Department has determined that the plaintiffs have not supplied a sufficient reason for the Department to question its preliminary assessment in this case that former President Zedillo's alleged actions were taken in an official capacity. The complaint is predicated on former President Zedillo's actions as President, not private conduct. Plaintiffs' allegations seeking to hold former President Zedillo liable simply because he was serving as President when lower level officials allegedly committed tortious acts do not provide the Department with a sufficient reason to question its preliminary assessment described above. To the extent the Complaint contains any particularized allegations of specific actions allegedly taken by former President Zedillo himself, the Department finds that they also do not provide a sufficient reason to question its initial assessment. For these reasons, the Department has determined that former President Zedillo's alleged actions were taken in an official capacity, and he enjoys immunity from this lawsuit.

Accordingly, the Department of State requests that the Department of Justice submit to the district court an appropriate filing setting forth its determination that former President Zedillo is immune from suit in this action.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harold Koh', written in a cursive, stylized script.

Harold Hongju Koh
Legal Adviser